

R E M A R K S

By this Amendment the specification has been amended to remove references to specific claims, and claims 1-7 have been amended to better define the invention. Entry is requested.

The examiner will find attached hereto a Supplemental page 7 for this application containing an abstract of the disclosure.

In the outstanding Office Action the examiner has provisionally rejected claims 1, 5 and 6 on the grounds of obviousness-type double patenting over claims 1, 5 and 6 of the copending application Serial No. 11/436,619.

A Terminal Disclaimer is submitted herewith.

The examiner has rejected claims 1-3, 5 and 6 under 35 U.S.C. 103(a) as being unpatentable over Seligman, and he has rejected claims 4 and 7 under 35 U.S.C. 103(a) as being unpatentable over Seligman in view of Engebretson. The inventor asserts that these rejections cannot apply to the amended claims.

In Seligman a cochlear implant device is described wherein the stimulation rate is modulated at a rate determined by the cell voltage. When the cell voltage is above a predetermined threshold level, the stimulation rate is at a pre-set normal value. When the cell voltage fall below the predetermined threshold, the speech processor operates at a reduced stimulation rate, and this rate is determined by the measured cell voltage.

Seligman does not disclose a hearing aid wherein a receiver supplies a sound pressure level. Also, Seligman does not suggest to temporarily disconnecting such a receiver. The Seligman suggestion of moderating the stimulation rate at the implanted electrodes is not similar to completely disconnecting the receiver. The receiver in a hearing aid is a loudspeaker, and disconnecting this speaker, would by the ordinary skilled person be regarded as serious mistake, as this would deprive the user of the most important benefit from the hearing aid: namely sound. It has been discovered that a temporary disconnection of the receiver, repeated at a high frequency is possible without noteworthy distortion of the sound output to the user. As Seligman does not propose outputting sound to the user, but proposes electric stimulation of nerve tissue to generate the sensation of sound, a person of ordinary skill cannot retrieve information or hints leading towards a hearing aid wherein the receiver is disconnect temporarily when the power supply faults. Also, the consideration regarding highest audio frequency does not apply to Seligman as no real audio output is delivered from the implanted device. In an implanted device stimulation rate and the perceived frequency of the sensation of the sound caused by the stimulation are not interlinked, and adjustments of the stimulation frequency would not lead the skilled person towards the audio frequency of a sound level producing hearing aid.

Claims 2, 3, and 6 comprise patentable matter due to their dependency on the dependent claims 1 and 5.

The apparatus claim 5 is patentable according to the above as the apparatus claims similar limitations.

With regard to claims 4 and 7, examiner argues that the content of these claims is obvious in the light of Seligman in combination with Engebretson, the point being that Engebretson teaches a rechargeable battery. Such batteries are well known in connection with hearing aids, and claims 4 and 7 comprise patentable matter due mainly to their dependency on a patentable independent claim.

Favorable reevaluation is requested.

Respectfully submitted,

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